

MAY 28 2002

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of:

Keystone Corporation, Keystone Corp.
Political Action Committee and Monte
Miller, as treasurer
Friends of Jon Porter, Inc. and George
Swarts, as treasurer
Jon C. Porter, Sr.
Ensign for Senate and Sandra J. Johnson,
as treasurer

MUR 5019

SENSITIVE

GENERAL COUNSEL'S REPORT #3

I. ACTIONS RECOMMENDED

Find no reason to believe that Jon Porter or Friends of Jon Porter ("the Porter Committee") violated certain provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") but take no action regarding other alleged violations and close the file as it pertains to them. Take no action and close the file with respect to Ensign for Senate ("the Ensign Committee").

II. BACKGROUND

On March 6, 2001, the Commission found reason to believe that the Keystone State Committee violated 2 U.S.C. §§ 441b and 433 and 11 C.F.R. § 102.5. The Commission also

1 found reason to believe that the Keystone Federal Committee violated 2 U.S.C. §§ 441b,
2 441a(a)(1)(A), 434(b), 434(a)(4)(A), and 433(c); and 11 C.F.R. §§ 102.5, 106.6(a), 104.10(b)(4),
3 and 114.5.¹ The basis for these findings is reflected in the amended factual and legal analysis
4 ("Analysis") that the Commission approved on April 6, 2001.

¹ The Commission took no action with regard to this Office's recommendation to find reason to believe that the Porter Committee violated 2 U.S.C. §§ 441a(f) and 434(b). The Commission also rejected this Office's recommendation to find reason to believe that the Ensign Committee violated 2 U.S.C. § 441a(f). In a memorandum to the Commission dated April 3, 2001, this Office noted that it would not draft a Statement of Reasons, but would later circulate a General Counsel's Report explaining the rationale, set forth below, for the Commission's rejection of certain recommendations in the First General Counsel's Report.

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B. Excessive Contributions

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This matter also involves allegations that the Keystone Federal Committee made

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excessive contributions to the Ensign and Porter Committees. See GCR #1, pp. 30-35. On

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1 March 30, 2000, the Keystone Federal Committee contributed \$3,000 to the Ensign Committee
2 and \$6,000 to the Porter Committee.⁷ The Keystone Federal Committee argues that these
3 contributions were legal because it had achieved multicandidate status at the time it made the
4 contributions.

5 The Keystone Federal Committee appears to have met all of the requirements to qualify
6 as a multicandidate committee when it made the contributions on March 30: it was registered
7 under section 433 of the Act for more than six months; it had received contributions from over
8 fifty different individuals, and it had made contributions to at least five different federal
9 candidates. *See* 2 U.S.C. § 441a(a)(4). Nonetheless, committees are required to certify that they
10 have achieved multicandidate status by filing an FEC Form 1M before making any contribution
11 that exceeds \$1,000 per election. *See* 11 C.F.R. § 102.2(a)(3). The Keystone Federal Committee
12 claims that it was not aware of this filing requirement, which is why it did not submit a Form 1M
13 until July 20, 2000.⁸

14 In the First General Counsel's Report, this Office reasoned that until the Keystone
15 Federal Committee actually registered with the Commission as a multicandidate committee, it
16 was not permitted to contribute more than \$1,000. *See* GCR #1, pg. 30. Consequently, in
17 addition to recommending that the Commission find reason to believe that the Keystone Federal
18 Committee made excessive contributions, this Office recommended that the Commission find

⁷ In the First General Counsel's Report, this Office noted that while the Keystone Federal Committee reported making a single \$6,000 contribution to the Porter Committee, the Porter Committee reported receiving two contributions: \$2,000 for the primary election and \$4,000 for the general election. The Porter Committee has since provided this Office with documentation that the Keystone Federal Committee redesignated its \$6,000 check.

⁸ The Keystone Federal Committee states that after it learned of this filing requirement (after the complaint was filed), it requested and received refunds from the Porter and Ensign Committees. These refunds, however, did not occur within the 60 day time frame allowed by 11 C.F.R. § 103.3(b)(3).

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1 reason to believe that the Ensign and Porter Committees violated 2 U.S.C. § 441a(f) by accepting
2 an excessive contribution from the Keystone Federal Committee. The Commission, however,
3 unanimously declined to adopt findings against the Porter and Ensign Committees.⁹

4 During the Executive Sessions on February 13 and March 6, 2001, the Commission
5 reached a consensus that because the Keystone Federal Committee had fulfilled the Act's
6 requirements for becoming a multicandidate committee, the Porter and Ensign Committees could
7 not have accepted an excessive contribution. Further, the Commission acknowledged that while
8 the regulations required the Keystone Federal Committee to register as a multicandidate
9 committee before making a contribution exceeding \$1,000, there is no similar provision
10 prohibiting a committee from *accepting* a contribution in excess of \$1,000 from an otherwise
11 qualified donor committee.

12 Therefore, given the Commission's view as to the legality of the recipient committees'
13 conduct, this Office recommends that the Commission take no action against the Porter and
14 Ensign Committees regarding these contributions. Additionally, because there is no evidence
15 that Jon Porter had a personal role in accepting the contribution, this Office recommends the
16 Commission find no reason to believe that he violated 2 U.S.C. § 441a(f).

⁹ The Commission found reason to believe that the Keystone Federal Committee violated 2 U.S.C. § 441a(a)(1)(A) with respect to its reported \$6,000 contribution to the Porter Committee. The Commission did not make any direct findings pertaining to either the Porter or Ensign Committees with respect to the contributions from the Keystone Federal Committee.

C. Earmarking Issues

In the First General Counsel's Report, this Office analyzed the complaint's allegation that the Keystone Federal Committee engaged in various schemes to funnel money to candidates from individual contributors. See GCR #1, pp. 25-29. Overall, this Office found no evidence of such schemes, although a series of contributions to and from the Keystone Federal Committee on March 30, 2000 raised some questions. On March 30, the Keystone Federal Committee received a total of \$1,000 in contributions from 19 individuals, a number of whom were affiliated with the Porter Committee or with the Ensign Committee. The same day these contributions were received, the Keystone Federal Committee contributed to both the Porter and Ensign Committees.

The Keystone Federal Committee has stated that it solicited the 19 contributions to meet the multicandidate status requirement of 50 contributors. Before March 30, the Keystone Federal Committee had received contributions from only 34 individuals—16 short of the 50 needed to attain multicandidate status. On March 30, 2000, however, the Keystone Federal Committee received contributions from 18 new contributors, pushing it over the qualifying mark and making it eligible to contribute up to \$5,000 to candidates. See 2 U.S.C. § 441a(a)(4).

As explained in the First General Counsel's Report, the available information supported the Keystone Federal Committee's position that the contributions were not earmarked. Further,

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1 the facts supported the contention of the Keystone Federal Committee that the individuals who
2 contributed on March 30 were simply helping the Keystone Federal Committee achieve
3 multicandidate status. Accordingly, the Commission found no reason to believe that the
4 Keystone Federal Committee, the Ensign Committee, or the individuals involved in the
5 transactions violated the Act. The Commission took no action regarding Jon Porter and the
6 Porter Committee because this Office wanted to gather further information before making a
7 recommendation as to their involvement in the March 30 transactions.

8 No evidence has arisen that demonstrates that either Jon Porter or his committee
9 participated in any scheme to funnel impermissible funds through the Keystone Federal
10 Committee. Therefore, this Office recommends that the Commission find no reason to believe
11 that Jon Porter violated 2 U.S.C. § 441a(a)(1)(A) either by earmarking or by operation of
12 11 C.F.R. § 110.1(h) by contributing to the Keystone Federal Committee with the apparent
13 intention of helping it achieve multicandidate status. Likewise, this Office recommends that the
14 Commission find no reason to believe that the Porter Committee violated 2 U.S.C. §§ 441a(f) or
15 434(b) by virtue of receiving contributions from the Keystone Federal Committee that may have
16 originated from individuals who wanted to help the Keystone Federal Committee achieve
17 multicandidate status. Finally, this Office recommends that the Commission close the file as it
18 pertains to Jon Porter, the Porter Committee, and the Ensign Committee.

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V. RECOMMENDATIONS

Take no action against Ensign for Senate and Sandra J. Johnson, as treasurer,¹⁴ regarding the allegation that they accepted an excessive contribution from the Keystone Federal Committee;

Take no action against Friends of Jon Porter, Inc. and George Swarts, as treasurer, regarding the allegation that they accepted an excessive contribution from the Keystone Federal Committee;

Find no reason to believe that Friends of Jon Porter, Inc. and George Swarts, as treasurer, violated 2 U.S.C. § 441a(f) or § 434(b) by virtue of receiving contributions from the Keystone Federal Committee that may have originated from individuals who wanted to help the Keystone Federal Committee achieve multicandidate status;

Find no reason to believe Jon C. Porter, Sr. violated 2 U.S.C. § 441a(f);

Find no reason to believe that Jon C. Porter, Sr. violated 2 U.S.C. § 441a(a)(1)(A) either by earmarking or by operation of 11 C.F.R. § 110.1(h) by contributing to the Keystone Corp. Political Action Committee with the apparent intention of helping it achieve multicandidate status;

Close the file as it pertains to Ensign for Senate and Sandra J. Johnson, as treasurer; Friends of Jon Porter, Inc. and George Swarts, as treasurer; and Jon C. Porter, Sr.;

¹⁴ Sandra J. Johnson has replaced the previous treasurer, Candance Collins Olson.

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Lawrence H. Norton
General Counsel

5/23/02
Date

BY:

Rhonda J. Vosdigh
Rhonda J. Vosdigh
Associate General Counsel for Enforcement

Mark D. Shonkwiler
Mark D. Shonkwiler
Acting Assistant General Counsel

Brant S. Levine
Brant S. Levine
Attorney

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